IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 33 of 1996

Date of Decision : 20.12.2007

Kali Dass & another …Appellants.

v.

Dandu Ram …Respondent.

***Coram*:**

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *Yes*

For the appellants: Mr.Dushayant Dadhwal, Advocate.

For the respondent. Pt. Om Parkash, Advocate

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment and decree dated 28.9.1995 passed by the District Judge, Hamirpur in Civil Appeal No. 76 of 1989 titled as Dandoo Ram v. Kali Dass & another, reversing the judgment and decree dated 21.3.1989 passed by the Sub Judge Ist Class, Hamirpur in Case No. 42 of 1987 titled as Dandoo Ram v. Kali Dass & another.

The appeal was admitted on the following substantial questions of law:-

"1) Whether the learned District Judge was right in law in decreeing the suit of the respondent/

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

plaintiff without returning a finding on the location, area and identification of the land?

2) Whether the learned District Judge was right in law in ignoring the revenue record supporting the case of the appellants /defendants and holding that the presumption of truth attaching to the revenue record have been rebutted?

3) Whether the judgment of the learned Appellate Court is vitiated by the fact that there is no appreciation of evidence of either parties, but the suit been decreed merely by reference to the names of the witnesses?

4) Whether the learned District Judge was right in law in decreeing the suit of the respondent/ plaintiff for "Some area of the land" without as to which was the land in dispute and whether the suit was maintainable without there being any Tatima on the record?"

However, during the course of hearing, the learned counsel for the appellants has raised another substantial question of law and after hearing the learned counsel for the parties, the following substantial question of law is framed:-

"Whether the suit was instituted by a duly authorized and competent person?"

With the consent of the learned counsel for the parties, the matter was taken-up for hearing and is being heard as such.

The appellants herein are referred to as 'the defendants' and the respondent herein is referred to as 'the plaintiff'.

The plaintiff's suit being Case No. 42 of 1987 titled as Dandoo Ram vs. Kali Dass etc. filed before the Sub Judge Ist

Class, Court No.II, Hamirpur, H. P., was instituted in the name of Shri Dandoo Ram through his Special/General Power of Attorney Prem Chand, son of Shri Dandoo Ram. During trial, the said Power of Attorney was exhibited as Ext.P1. Perusal of the same would show that the Power of Attorney was executed in relation to the correction proceedings which the plaintiff had filed before the concerned authorities and not the proceedings and suit in question.

While dismissing the plaintiff's suit, the trial Court vide its judgment and decree dated 21.3.1989 observed as under:-

> "Before, I part with the discussion of this issue, I would also like to point out that Ext.P1 is the Photostat copy of the special power of attorney dated 24.9.1986. This attorney was for a case for correction titled Dandu Ram vs. Kali Dass. There is also a general power of attorney Ext.P4 which is dated 12.11.1987. This suit was filed on 17.2.1987. The statement of PW-1 Shri Prem Chand was recorded on 14.9.1987. This clearly shows that at the time of filing of suit as special /general attorney of Shri Dandu Ram, Sh. Prem Chand was not having any such attorney on the date when the suit was filed or even on the date when his statement was recorded before court as PW-1. Ext.P1, the special attorney was for the correction application which Dandu Ram filed against Kali Dass. On that special power of attorney, plaintiff Dandu Ram was not competent to file the present suit through his special attorney Sh. Prem Chand. As Prem Chand was not

having special or general power of attorney on the date of filing of this suit, therefore, this suit which was filed through him is not legally maintainable. With these observations and the discussion arrived at above I decide this issue is in no."

Admittedly, this part of the finding was not challenged by the plaintiff by way of an appeal. The aforesaid decree was, however, set aside and the plaintiff's suit was decreed in his favour and against the defendants in terms of the impugned judgment. A perusal of Ext.P1 itself would show that Shri Prem Chand through whom the suit was filed by the plaintiff was not authorized to institute the proceedings in question and the suit was not instituted by a duly authorized and competent person and as such was not maintainable.

The other substantial questions of law are not required to be answered for the reason that the suit instituted by the plaintiff itself was not in accordance with law. The appeal is accordingly accepted and the impugned judgment and decree dated 28.9.1995 is accordingly set-aside and the suit of the plaintiff is dismissed.

Cross objection No. 179 of 1997

In view of the dismissal of the main suit, the cross objections are also dismissed.

December 20, 2007. **(Sanjay Karol)**
(rana) **Judge.**